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July 14, 2006

Andrea Nixon, Clerk
Cable Division
One South Station, Second Floor
Boston, MA 02110

RE: Petition by Verizon New England Inc. To Adopt Regulations Governing
Cable System Licensing Process, CTV 06-1

Dear Ms. Nixon:

On March 16, 2006, Verizon New England Inc., d/b/a Verizon Massachusetts ("Verizon") filed, pursuant to G.L. c. 30A, § 4, c. 166A, § 16, and 207 C.M.R. § 2.01(1), a petition with the Department of Telecommunications and Energy ("Department"), through the Cable Television Division ("Cable Division"), asking the Cable Division to adopt a proposed regulation governing the licensing process for a cable system in a city or town where the issuing authority has previously granted at least one cable license, and the applicant seeks to offer cable television service in competition with the incumbent provider. On May 5, 2006, the Department issued an order instituting a Rulemaking proceeding and requested comments on Verizon's proposal. The Attorney General submits this letter as his Comments.

Verizon's Proposal

Verizon asks the Division to adopt a new regulation governing time limits for applications for competitive licenses. It also proposes to amend 207 C.M.R. 3.09, which governs appeals to the Department of an issuing authority's franchising decision or a failure by an issuing authority to act on an application. The proposed amendment provides for *de novo* review by the Department if a municipal franchising authority fails

to take any action on an application required by 207 C.M.R. 3.00 within 60 days. *Verizon's Proposed Regulation*, 3.09(1)(a) ("Proposed Regulations").¹

Verizon claims that its proposal will "streamline" the existing process and enable it to provide competitive alternatives for customers.² Verizon argues that the current local franchise process is a barrier to its competitive entry in the local cable market and is in need of reform. *Petition of Verizon New England Inc. for Adoption of Competitive License Regulation* at 2 ("Verizon Petition"). Verizon maintains that the current system of municipal licensing of cable systems creates "unreasonable entry barriers that weaken video competition and hurt consumers by delaying the benefits of competition," *Id.* Verizon further claims that the current licensing process serves "no legitimate purpose, and deprives consumers of a competitive alternative for video service while also undercutting the incentives to invest in and deploy the broadband networks over which competitive video services will be delivered." *Id.* at 4.

The Department Should Reject Verizon's Proposed Rule

The current framework allows a city or town twelve months to approve or deny an application. 207 C.M.R. 3.02(4).³ During this period, Mayors and Boards of Selectman, acting in their capacity as license Issuing Authorities, must review the license applicant's proposal and qualifications,⁴ identify important community cable needs, hold multiple negotiating sessions, undertake extensive document drafting and revisions, and conduct

¹ Under Massachusetts law, local authorities have the exclusive right to grant cable franchises. G.L. c. 166A, § 3. The Department's statutory role is to review appeals of franchising decisions. G.L. 166A, § 14.

² Verizon's proposed regulation, which applies where an operator applies for a competitive license, would "expedite" the licensing process by requiring the issuing authority to hold a public hearing on the application within 60 days. *Proposed Regulations* at 3.10(2). Within 30 days following the date of the hearing, the issuing authority must approve or deny the application. *Id.* at 3.10(3). Under Verizon's proposal, the municipal licensing authority would have only thirty (30) days from the public hearing to, among other things, complete any necessary inquiry into issues raised at the hearing; hold multiple negotiations sessions; draft, exchange, review and discuss multiple document revisions; hold deliberative cable committee and/or Selectmen meetings to review negotiations and documents, and reach municipal decision on the final license. From application to final license, the proposed regulation allows the issuing authority only 90 days to conduct a public hearing and issue a detailed written statement containing the reasons for approval or denial. *See id.* at 3.10.

³ Before this twelve-month period commences, the city or town has sixty days from the time an application is filed to decide whether to undertake the licensing proceeding. 207 C.M.R. 3.02.

⁴ Start-ups and venture capital companies could also use the competitive licensing process, in addition to Verizon. Reviewing the qualifications of these companies would be even more time consuming.

related meetings and hearings. Experience shows that this process requires every bit of time permitted.⁵

The expedited timetable Verizon proposes is not adequate to review an application. Verizon's proposal assumes that the time a licensing authority needs to process an application for a competitive license is nine months less than the time needed to process an application for an initial license. Verizon, however, offers no evidence to support this proposition. Cities and towns have every incentive to expedite the arrival of cable competition and their communities, but there is no reason to believe that this process could be completed any faster than an initial licensing proceeding. Shortening the twelve-month timetable to three months is simply not feasible.⁶

Municipal franchising provides benefits for consumers, such as local programming, service area, customer service, PEG access, senior discount programs, and, for local government, more effective Public Right-of-Way (PROW) management and local area data networks.⁷ With its proposed rule, Verizon seeks to eliminate or diminish the role of cities and towns by imposing an unreasonable timetable on municipal decisions. The Legislature has previously rejected such an approach, and, given the comprehensive statutory scheme governing cable franchising, the Legislature should make any changes such as those Verizon requests.^{8,9} The existing licensing framework

⁵ Congress has recognized that, even in the case of a license renewal, the necessary analysis requires substantial time. See 47 U.S.C. 546 (2005) ("A franchising authority may, on its own initiative during the 6-month period which begins with the 36th month before the franchise expiration, commence a proceeding which affords the public in the franchise area appropriate notice and participation for the purpose of (A) identifying the future cable-related community needs and interests, and (B) reviewing the performance of the cable operator under the franchise during the then current franchise term.").

⁶ The time necessary to process a competitive application may likely be greater than the time needed to consider an initial license. The franchise agreements of incumbent cable operators require level playing field clauses. Consideration of a competitive license application requires the additional step of performing level playing field analysis. *E.g.*, *Cable Television Renewal License Issued to Comcast of Massachusetts/Virginia, Inc.*, p. 9 (effective July 13, 2004) ("The grant of any additional cable television license(s) and Renewal License(s) shall not be on terms more favorable or less burdensome than those contained in this Renewal License.").

⁷ See *Final Report Of the Special Commission Established (Under Section 238 of Chapter 184 of the Acts of 2002) for the Purpose of Making an Investigation and Study Relative to the Adequacy and Effectiveness of Existing Licensing and Regulations of the Cable Television Operation By Municipalities and the Commonwealth*, p. 23 (December 30, 2003) ("Cable Commission Report").

⁸ Statute provides comprehensive laws for license application and renewal. It does not distinguish between competitive and initial licenses. See G.L. c. 166A, §§ 1-22.

⁹ *Cable Commission Report*, pp. 22-23 ("During the Commission meetings and hearings, there was discussion of franchising alternatives. City and town officials, as well as Access organizations, are virtually unanimous in their strong opposition to any reduction in local control over the franchising process.")

has functioned for almost thirty years. The current procedures have allowed municipalities to grant both initial cable licenses and competitive licenses, allowing competitive carriers such as RCN and municipal light departments to serve many communities.¹⁰

The Attorney General agrees with the Department that this proceeding “would greatly benefit by a comprehensive record containing examples of actual experience and data.” *Order Instituting Rulemaking*, CTV 06-1, p. 5. Verizon, however, has produced no evidence that existing procedures or the failure of cities or towns to act have hindered its deployment of video service.¹¹ Indeed, the Department notes, nowhere in its petition has Verizon committed to serving additional communities if the Department adopts its proposal. *Order Instituting Rulemaking*, CTV 06-1, p. 5.¹² Therefore, the Department should open an evidentiary hearing and require Verizon to establish how the existing system deprives customers of competitive cable alternatives.

¹⁰ Cable licenses are “non-exclusive.” G.L. c. 166A, § 3.

¹¹ Without evidentiary support, Verizon implies that municipal licensing authorities may fail to take action on an application or deny it unreasonably.

¹² The City of Boston reports that Verizon declined the City’s requests to commence citywide licensing activity, which would have greatly expanded Verizon’s ability to serve a substantial number of the state’s cable subscribers. *In the Matter of Implementation of Section 621(a)(1) of the Cable Communications Policy Act of 1984 as amended by the Cable Television Consumer Protection and Competition Act of 1992*, Comments of the City of Boston, p. 2 (“Verizon has declined the City’s repeated encouragement to enter a franchise negotiation, opting instead to pursue a moderately-paced rebuild of existing plant...The City has attempted to educate Verizon about the informal and expedited franchising processes available in order to counter the erroneous perception cable franchising is somehow burdensome.”); *See also Comments of RCN*, p. 2 (March 22, 2006) (citing Verizon’s comments to analysts that Verizon is not ready to market television programming to potential customers).

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Conclusion

The changes proposed in Verizon's petition are unnecessary, and attempt to diminish the local review the Legislature has granted cities and towns. As a result, the proposed changes could eliminate potential benefits that increased competition may bring to consumers.

Respectfully submitted,

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By: /s/ Jonathan B. Engel
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